

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: SUSPENSION OF SERVICE TERMINATIONS :
AND CERTAIN COLLECTIONS ACTIVITIES : DOCKET NO. 5022
DURING THE COVID-19 EMERGENCY :

PUBLIC COMMENT AND REQUEST FOR CONTINUING REVISED ORDER
Submitted by the R.I. Center for Justice
on behalf of the George Wiley Center

On March 16, 2020, the Public Utilities Commission (PUC) voted to enter the first emergency order related to the COVID-19 pandemic. The order included various restrictions on the utilities to protect life-sustaining customer access to utility services during the emergency, many of which have subsequently been lifted. In its July 15, 2020 order, the Commission extended the prohibition on the assessment of certain fees. Specifically, the Commission stated, “Utilities subject to this order shall continue to suspend late fees, interest charges, credit card fees, debit card fees, and ACH fees.” (Order No. 23866).

On August 12, 2021, the Commission issued a set of data requests to the utilities regarding the subject of lifting the prohibition on charging late/interest fees and on passing through electronic payment fees to customers paying their bills using those methods.

On September 29, 2021, the Commission issued a request for Public Comment:

“Prior to the Commission considering whether to lift the prohibitions set out in Order No. 23866, paragraph 5 which states, in part, “Utilities subject to this order shall continue to suspend late fees, interest charges, credit card fees, debit card fees, and ACH fees”, the Commission will accept written comments from the Division and interested parties. The

comments should specifically comment on whether the prohibition should be lifted, the amount of notice to be given to customers prior to the lifting of the prohibition, and the rationale for the position.”

BACKGROUND

Since March 2020, the Commission has protected the public’s health and has protected utility consumers suffering economic harm during the pandemic. These protections have taken different forms and have been modified as the circumstances of the pandemic have evolved. The March 2020 Emergency Order, established in this docket pursuant to R.I. Gen. Laws § 39-1-32(a), ceased certain collection activities, placed a moratorium on utility terminations for all customers, provided for revised payment plan options for customers who had fallen behind on their utility bills, and suspended late fees, interest charges, and credit/debit card and ACH fees. These provisions have been modified and continued in a series of subsequent orders in this docket. After September 2020 the moratorium on terminations was limited to low-income eligible residential customers and subsequently expired in the summer of 2021.

Although the moratorium on service termination has expired, the continued temporary suspension of late fees, interest charges, and credit/debit card and ACH fees are still very much needed by low-income customers for the reasons stated more fully below. The Delta variant of the COVID-19 virus brutally reminded us that the course of this crisis is tremendously unpredictable. Although widespread vaccination had begun to stabilize the public health emergency, the Delta variant and the severe economic impact of the pandemic is still harming many Rhode Islanders. Thus it is critical that the Commission order the continuation of

protection from late fees, interest, and electronic payment fees for low-income residential customers.

We therefore request that the Commission issue a revised temporary Order as a continuing response to the ongoing pandemic emergency and resulting economic emergency at least until Rhode Island is no longer deemed to be at the high, very high, or extremely high transmission level of the COVID-19 virus, as determined by the CDC. Such continuing Order would require the following:

1) Continuing the suspension of late fees, interest charges, and credit/debit card and ACH fees by all utilities covered by Order No. 23866 for **low-income residential customers**.

a) *For utilities with no existing low-income assistance programs:* Requiring that as part of the notification of all customers that fees are being reinstated, all residential customers be notified that late fees, interest charges, and electronic payment fees will continue to be waived if they submit evidence that they are eligible for a low-income discount through another utility or eligible for Rent Relief RI assistance.

b) *For utilities with existing low-income assistance programs:* Requiring that as part of the notification of all customers that fees are being reinstated, all residential customers be notified that late fees, interest charges, and electronic payment fees will continue to be waived if they are already enrolled in the low-income discount or if they apply for and are found eligible for the low-income discount or Rent Relief RI.

DISCUSSION:

Low-Income Customers Require Continued Suspension of Late Fees, Interest Charges, and Electronic Payment Fees Because Rhode Island is in a Declared State of Emergency and Has Consistently Experienced a “Very High” or “High” Rate of Disease Transmission, as Determined by the CDC, Since Late Summer

In [Executive Order 21-86](#), issued on August 19, 2021, Governor Daniel J. McKee extended the current State of Emergency through at least November 13, 2021. [McKee stated](#) that extending the state of emergency was necessitated by the prevalent impact of COVID variants resulting in continued “high” transmission, current infection, vaccination, hospitalization and death rates. Rhode Island is working to vaccinate all residents, however, the pandemic is still ongoing and threatening Rhode Islanders’ health and economic well-being, with winter fast approaching. Since the arrival of the Delta variant in late summer, Rhode Island has consistently been at or above the [“high” transmission level for the COVID-19](#) virus as determined by CDC transmission rate tracking. This is based on a seven day average of new cases per 100,000.

Roughly [77% of Rhode Islanders have been either fully vaccinated or received at least their first vaccine dose](#); however nearly 23% of Rhode Island’s population has not yet been vaccinated and are at risk of contracting the virus, particularly in the context of relaxed public health restrictions and aggressive new disease variants. Fees that may simply pose an inconvenience to Rhode Islanders who are not low-income can be a serious barrier to paying the bill for low-income Rhode Islanders who are hardest hit by the ongoing level of disease and its associated economic dislocations. Even for low-income households that may be protected from termination of utility service by the upcoming winter moratorium, it will be very harmful to have

what may be an already unaffordable utility arrearage increased by the imposition of late fees and interest charges during the coming months. Continuing to suspend late fees for low-income consumers during this period is particularly urgent. A fixed-amount late fee is inherently regressive “because everyone, regardless of income level, pays the same dollar amount. By taking a closer look, it is easy to see that such a [fee] causes lower-income people to pay a larger share of their income than wealthier people pay.”¹

The economic harm of the pandemic has been most acute for low-income Rhode Islanders. For example, housing cost burden for lower-income Rhode Islanders has risen during this period. Of the roughly 411,000 Rhode Island households, 40% rent rather than own their homes. Nearly half of these renters are cost burdened (pay more than 30% of income for housing) and for the first time in 2020 a renter with the average income for renter households could afford to rent a two bedroom apartment in *only one Rhode Island community*, Burrillville.²

Given the ongoing disproportionate vulnerability of low-income residents to both the health crisis and its economic consequences, low-income Rhode Islanders still need protection from late fees, interest charges, and credit and debit card fees at least until the statewide “high” transmission rate falls consistently to or below the moderate level. This is a reasonable approach because even in the most inclusive population of utility consumers statewide, electric customers of National Grid, low-income customers represent only approximately 8% of all customers³, the

¹ https://apps.irs.gov/app/understandingTaxes/student/whys_thm03_les02.jsp, IRS.gov, retrieved 10/21/2021

² 2021 Housing Fact Book, HousingWorksRI, October 15, 2021
https://www.housingworksri.org/Portals/0/Uploads/Documents/HWRI_HFB21.pdf?ver=5nrQwMV5MPHI5PtR9Uk6vA%3d%3d

³ National Grid Low-Income Monthly Report, August 2021

economic impact of continuing to suspend late fees, interest charges, and electronic payment fees will have a small impact on overall utility revenues of the utilities covered by the Order.

Electronic Payment Fees Should Not Be Reinstated for Low-Income Consumers

Five of the nine regulated utilities⁴ responding to the PUC data request on waived fees report that they do not advocate reinstating electronic payment fees at this time. These utilities had either absorbed electronic payment fees prior to the pandemic or have concluded that charging point-of-transaction credit and debit card fees is counterproductive because facilitating customer payments by the most convenient means available and removing obstacles to electronic bill payment is in the long term best interest of the utility and the customer.⁵ For example, “We have never charged a fee for credit card/debit card/online check payments. It is our believe (sic) that not charging a fee encourages electronic payments which ultimately saves processing expenses and improves cash flow.”⁶ And: “This practice has resulted in better collection of customer payments mainly because of the convenience of using a credit card or ACH method with no penalty or fee to the customer.”⁷ Even National Grid, which advocates the reinstatement of credit/debit card fees, acknowledged that it experienced a 20% increase in credit/debit card payment and roughly equivalent increase in resulting payments (18%) during a six month period in 2021 when compared to the same period when the fees were being charged in 2020.⁸

These responses reflect a larger economic reality - the massive shift from cash and paper check payments to online and digital payments across many sectors. “Paying utility bills

⁴ Pascoag Utility District, Block Island Utility District, Pawtucket Utility District, Kent County Water Authority, Narragansett Bay Commission

⁵ The Narragansett Bay Commission indicated that it might seek to return to charging electronic payment fees at a future time but not while the state of emergency is still so unstable.

⁶ Block Island Utility District response to PUC Waived Fees Data Request, August 2021

⁷ Kent County Water Authority response to PUC Waived Fees Data Request, August 2021

⁸ National Grid Response to PUC Data Request, Waived Fees PUC-6, August 2021 Response PUC 6-3

electronically – including by credit and debit cards – is on the rise. Nationwide, the share of U.S. utility consumers writing and sending checks to pay their bills stood at just 17% in 2020, according to a J.D. Power study.”⁹

As early as November, 2012 the National Association of State Utility Consumer Advocates (NASUCA) issued a [resolution “Urging Utilities to Eliminate ‘Convenience’ Fees for Paying Utility Bills with Debit and Credit Cards”](#) based on the disproportionate burden these fees place on low-income consumers. Key considerations raised in the resolution include the fact that prepaid debit cards are the most available payment method accessible to low-income unbanked households and “convenience fees imposed on debit card use undercut the policy objectives of federal programs (for example, social security) and state programs (for example, child support and unemployment compensation) that issue prepaid debit cards to beneficiaries as an effective and cost-efficient way to manage operational expenses, by eroding the purchasing power of such cards.” For example, during the pandemic many federal economic stimulus payments were [sent as prepaid debit cards](#). The NASUCA resolution also makes the critical point that “utilities incur payment transaction costs no matter what forms of payment they accept.” The processing costs of payments by paper check for example, are borne by the utility and not passed back to the consumer other than through rates. This creates a backward scenario in which more economically stable consumers who are banked and pay by check are not charged a fee at the point of transaction while low-income consumers who are unbanked may see their limited purchasing power further eroded by the imposition of electronic payment fees.

Some industry participants argue that it is not fair for all customers to pay for a service (credit/debit card processing) that is only used by some customers, and some advocates for

⁹ <https://www.creditcards.com/credit-card-news/utilities-payments-charge-credit-card-convenience-fees/>, March 23, 2021.

low-income customers have argued that it may harm low-income consumers to blend fees for credit card users into the rates for all customers.¹⁰ However for purposes of this temporary Order, limited to the continued state of emergency and period of “high” disease transmission, electronic payment fees should be waived for low-income consumers in order to enable them to make payments with pre-paid cards without eroding the value of that precious resources during a continued period of economic distress for already economically distressed households.

Before the temporary protection from electronic payments for low-income households in the Emergency Order in this Docket is considered for transition to a permanent policy, a more complete analysis can be made about (1) the general trend in both utilities and in the broader economy away from cash and check payments, a trend that has accelerated during the pandemic; and (2) strategies to mitigate the processing costs associated with electronic payments for all customers by building the most cost-effective capacity for these 21st Century payment processing capabilities and reducing third party costs.

It is also important to note that no responding utility provided a rationale for reinstating electronic payment fees related to a better customer experience, likelihood of enhanced collections if such fees are reinstated, equity concerns, or other positive basis for such a change. The only rationale provided for a reinstatement of electronic payment fees, stated by the minority of respondents who advocated reinstatement, was the desire to recoup the transaction costs. However the PUC in its request for Public Comment specifically stated: “The Commission will address cost recovery issues related to the waived fees separately.”

¹⁰ Id.

Late Fees and Interest Charges Are Not Needed for Low-Income Customers Due to the Availability of Federal Aid -- When Notices Are Sent To Customers They Should Include Information Regarding Rent Relief RI and the Continued Waiver of Fees for Low-Income Customers

Although all utilities responding to the Waived Fees data request and call for Public Comment advocated for the reinstatement of late fees and interest charges for purposes of accelerating customer bill payments, these “incentives to pay” are neither helpful nor necessary for low-income customers due to the availability of direct federal aid to pay these bills. In April of 2021, Governor McKee launched “Rent Relief RI,” with the intention of providing much needed “stability and assistance” to Rhode Island families who have faced financial hardship during the COVID-19 pandemic.¹¹ The funds are available to be used for both rental and utility arrearages and are designed to keep families in their homes, but also to help economically stabilize property owners and the community at large, including utility service providers. \$352 Million dollars are available, combining the Emergency Rental Assistance (“ERA1”) funds authorized by Congress in late December 2020 and the Emergency Rental Assistance Program under the American Rescue Plan Act of 2021 (“ERA2” enacted in March of 2021).¹²

If eligible, Rhode Island utility consumers can qualify for up to 18 months of utility assistance.¹³ Arrearages going back to April 1, 2020 can be paid in a lump sum by Rent Relief RI on behalf of eligible Rhode Island utility consumers. Late fees imposed on low-income consumers therefore will not serve as a method to “condition [customer] behavior” as National Grid asserts. Although National Grid suggests that “[c]ustomers typically seek to avoid an additional fee. The mindset that the late payment fee creates is one of avoiding a penalty if a bill

¹¹ Governor McKee Launches New Rental Assistance Program, <https://www.ri.gov/press/view/40799>

¹² [Emergency Rental Assistance Program | US Department of the Treasury](#)

¹³ Governor McKee Launches New Rental Assistance Program, <https://www.ri.gov/press/view/40799>

is paid by a certain date and the customer avoids the fee.”¹⁴ This rationale is simply not accurate when applied to the situation of low-income customers who are eligible for federal emergency relief to pay their COVID-period utility arrearage. The imposition of a late fee will not act as an incentive for quick payment to a household that is struggling to pay their rent and meet other basic expenses, it will just add to the burden of the amount owed.

Low-income households who are eligible to have their COVID-period utility bill paid by Rent Relief RI already have a huge incentive to apply for that assistance and get the bill paid, without regard to the addition of a late fee to their accumulating bill. Bills paid through Rent Relief reduce the amount of debt that will otherwise need to be written off as bad debt and thus need to be built into the rate base for all ratepayers. **To date Rent Relief RI has paid \$16,049,398 to National Grid on behalf of 13,197 low-income households.**¹⁵ There are 36,436 electric service households (the most inclusive category of utility consumer in the state) identified as low-income-eligible by National Grid. There are thus at least an additional 23,000 households who are presumptively eligible to have their utility bills paid (including bills for utility services beyond electric and gas services). This creates a powerful rationale for all regulated utilities to be instructed in the revised Order in this docket to mail information to all residential customers about how to apply for Rent Relief RI. Any customers found eligible for utility assistance through Rent Relief RI should also remain eligible for the continuing suspension of late fees, interest, and electronic payment fees.

This also supports inclusion in the Order of a requirement that utilities send these notices twice during a sixty day period before reinstating any of these fees for any residential customers.

¹⁴National Grid Response to PUC Data Request, Waived Fees PUC-6, August 2021 Response PUC 6-1

¹⁵[Rent Relief RI - Data Dashboard](#)

All of the utilities in their filings recommended that they provide either 30 days notice or 60 days notice prior to the reinstatement of fees. They suggested using bill stuffers, website, newspaper, and other outreach methods for these notifications. The importance of getting the word out to the at least 20,000 additional low-income households who are presumptively eligible for utility bill payment through Rent Relief RI is a powerful rationale for requiring two notifications, one at 60 days, and again at 30 days, prior to the reinstatement of fees. These notices should include explicit instructions on how to apply for Rent Relief RI utility assistance so that low-income households can be identified, get their utility bills paid, and be protected from late fees, interest charges, and electronic payment fees until the state of emergency and “high” level of transmission have been fully resolved.

To be eligible for the utility assistance, Rhode Islanders must demonstrate that their current income is below 80% area median income, that they have experienced a financial hardship—direct or indirect—during COVID-19, and that they have a past due utility bill.¹⁶

This federal aid will enable all Rhode Island utilities to receive payment for services while continuing to provide utility access for customers who have faced substantial financial hardships during the pandemic without the need for utilities to resort to late fees and interest charges to try to motivate customer payment. Actively assisting customers to connect to Rent Relief RI funding is perhaps the most powerful means to strengthen collections.

As discussed above, ensuring that all eligible Rhode Islanders access federal utility arrearage assistance through Rent Relief RI will have a positive impact on all ratepayers. For this reason, we request that the Commission include an instruction in its revised Order in this docket requiring utilities covered by the Order to send dual notifications and to emphasize the

¹⁶ Who can apply for rent relief? RI Housing, <https://www.rihousing.com/rentreliefri/>

importance to customers of establishing their eligibility not only for utility bill payment through Rent Relief RI but also for continued suspension of late fees, interest, and electronic payment fees.

\$44,783,692 in back rent has already been paid by Rent Relief RI and another \$37,032,935 in rent payments are in process. Combined with the \$16,049,398 in utility payments made to National Grid, thus far the total expenditure has been \$97,866,025 to provide economic support to landlords, tenants, low-income utility customers, and all ratepayers. There is up to \$254,133,975 remaining from the \$352 Million in rent and utility aid allocated by Congress to Rhode Island.¹⁷ These funds are additional, separate, and apart from the much-discussed APRA funds being debated in the General Assembly. These funds are authorized for expenditure through 2024. The Rent Relief RI funds represent an important economic stimulus to Rhode Island landlords and utilities. This presents a tremendous incentive for all regulated utilities to provide notice to their customers that if they are struggling economically they may be eligible for assistance in paying their utility bills. In this way millions of dollars in federal aid can be used to resolve unpaid utility bills that have accrued in Rhode Island during the pandemic. This serves the economic interests of all Rhode Island utilities while also serving all Rhode Island ratepayers' interest in limiting unpaid bills from the pandemic period, losses that would otherwise reappear in the rates paid by all utility customers.

CONCLUSION

The intersection of the continued declared emergency based on continuing “high” disease transmission, the intense pressure on economically distressed community members, and the availability of over \$200 Million in additional federal aid dictates that late fees, interest charges,

¹⁷ [Rent Relief RI - Data Dashboard](#)

and electronic payment fees should not be reinstated for low-income utility customers at this time. Instead, a revised Order should be issued in this docket requiring all utilities to provide notice 60 days, and again 30 days, before any fees are reinstated for general residential customers. These notices should highlight information about how utility customers can apply for assistance to pay their utility bills from Rent Relief RI and establish their eligibility as a low-income customer who would also remain eligible for the waiver of late fees, interest charges, and electronic payment fees.

The State of Rhode Island is still in a state of emergency and the state's economy and residents are reliant on the Commission to take action to ensure that eligible Rhode Islanders are referred to Rent Relief RI and that those eligible for that assistance remain eligible for a waiver of late fees, interest charges, and electronic payment fees. This will (1) serve as a significant economic stimulus to Rhode Island's utilities; (2) a protection from rate increases for Rhode Island's utility ratepayers across the board; and (3) contribute favorably to the state's economic recovery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer L. Wood", is placed on a light yellow rectangular background.

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